

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

Kimberly Kay Payne,
Plaintiff,

vs.

Pushmataha County Board of County
Commissioners, et al.,
Defendants.

No. CIV-09-217-Raw

SETTLEMENT CONFERENCE ORDER

PLEASE READ THIS ORDER CAREFULLY!

United States District Judge Ronald A. White has referred this case for a settlement conference and directed the Clerk to enter this Order. **ADJUNCT SETTLEMENT JUDGE BRYAN HARSTON** will act as a settlement judge who will not be involved in the actual trial of the case and who will assist in an objective appraisal and evaluation of the lawsuit. The following are mandatory guidelines for the parties in preparing for the settlement conference.

The court submits the following reminders to settlement conference participants for the purpose of attempting to create a more consistent, disciplined settlement conference:

1. Pay particular attention to the areas highlighted in portions of paragraphs 2, 7, 9, 11 and 13.
2. Counsel who will try the case (lead counsel) should be present for the Settlement Conference.

1. PURPOSE OF CONFERENCE

The purpose of the settlement conference is to permit an informal discussion between the attorneys, parties, non-party indemnitors or insurers, and the settlement judge of every aspect of the lawsuit. This educational process provides the advantage of permitting the settlement judge to privately express his or her views concerning the parties' claims. The settlement judge may, in his discretion, converse with the lawyers, the parties, the insurance representatives or any one of them outside the hearing of the others. Ordinarily, the settlement conference provides the parties with an enhanced opportunity to settle the case, due to the assistance rendered by the settlement judge. The court prohibits communications to the media and dissemination of any information to the public that does not facilitate the terms of the settlement as contemplated by the parties.

2. FULL SETTLEMENT AUTHORITY REQUIRED

In addition to counsel who will try the case being present, a person with full settlement authority must likewise be present for the conference. This **requires** the presence of your client or, if a corporate entity, an authorized **non-lawyer** representative of your client. **If the issue in dispute involves insurance coverage, a claims representative must also be present. An insurance company representative is not permitted to attend in lieu of an individual or corporate defendant.**

For a defendant, such representative must have final settlement authority to commit the company to pay, in the representative's discretion, a settlement amount recommended by the settlement judge up to the plaintiff's prayer (excluding punitive damage prayers in excess of \$100,000.00) or up to the plaintiff's last demand, whichever is lower.

For a plaintiff, such representative must have final authority, in the representative's discretion, to authorize dismissal of the case with prejudice, or to accept a settlement amount recommended by the settlement judge down to the defendant's last offer.

The purpose of this requirement is to have representatives present who can settle the case during the course of the conference without consulting a superior. A governmental entity may be granted permission to proceed with a representative with limited authority upon proper application.

3. EXCEPTION WHERE BOARD APPROVAL REQUIRED

If Board approval is required to authorize settlement, attendance of the entire Board is requested. In the alternative, a Board may designate one sitting member of the Board (preferably the Chairman) to represent the Board, if the Board gives, by binding resolution, the said representative full settlement authority as described in paragraph 2.

4. APPEARANCE WITHOUT CLIENT PROHIBITED

Counsel appearing without their clients (whether or not you have been given settlement authority) will cause the conference to be canceled and rescheduled. Counsel for a government entity may be excused from this requirement upon proper application.

5. AUTHORIZED INSURANCE REPRESENTATIVE(S) REQUIRED

Any insurance company that (1) **is** a party, (2) **can assert that it is** contractually entitled to indemnity or subrogation out of settlement proceeds, or (3) **has received notice or a demand pursuant to an alleged contractual requirement that it defend or pay damages**, if any, assessed within its policy limits in this case must have a fully authorized settlement representative present at the conference. Such representative must have final settlement authority to commit the company to pay, in the representative's discretion, an amount recommended by the settlement judge within the policy limits.

The purpose of this requirement is to have an insurance representative present who can settle the outstanding claim or claims during the course of the conference without consulting a superior. An insurance representative authorized to pay, in his **or her** discretion, up to the plaintiff's last demand will also satisfy this requirement.

6. ADVICE TO NON-PARTY INSURANCE COMPANIES REQUIRED

Counsel of record will be responsible for timely advising any involved non-party insurance company of the requirements of this order.

7. PRE-CONFERENCE DISCUSSIONS REQUIRED

When ordered to submit documents to the Adjunct Settlement Judge, submission may be made via email at bryan@law.harston.net. The Adjunct Settlement Judge may be reached via telephone at (214) 727-1199.

Prior to the settlement conference, the attorneys are directed to discuss settlement with their respective clients and insurance representatives, and opposing parties are directed to discuss settlement so the parameters of settlement have been explored well in advance of the settlement conference.

8. SETTLEMENT CONFERENCE STATEMENT REQUIRED

One copy of each party's settlement conference statement must be submitted directly to the Settlement Judge. **The parties are advised that the settlement statements called for in this Settlement Conference Order are not filed in the court file and, therefore, may be submitted directly to the Settlement Judge.**

Settlement Conference Statements must be submitted no later than noon on July 22, 2009.

Your statement should set forth the relevant positions of the parties concerning factual issues, issues of law, damages, and the settlement negotiation history of the case, including a recitation of any specific demands and offers that may have been conveyed. Copies of your settlement conference statement are to be promptly transmitted to all counsel of record.

The settlement conference statement will not be made a part of the case file. The parties may use demonstrative exhibits, photographs, videos, and video depositions. Adequate VCR and television equipment is available for use by the parties. **If such equipment is needed, please contact Lisa with the Court Clerk's office (918-684-7912) at least one day prior to the commencement of the conference to confirm that any needed equipment will be available.**

9. CONFIDENTIALITY STRICTLY ENFORCED

Neither the settlement conference statements nor communications of any kind occurring during the settlement conference can be used by any party with regard to any aspect of the litigation or trial of the case. Strict confidentiality shall be maintained with regard to such communications by both the settlement judge and the parties.

10. SETTING

The settlement conference is set on July 29, 2009 at 9:00 a.m. at the United State District Court for the Eastern District of Oklahoma, 101 N. Fifth Street, Muskogee, Oklahoma. Upon arrival, the parties and their respective counsel are directed to check in with the Court Clerk's Office (Room 208).

11. NOTIFICATION OF PRIOR SETTLEMENT REQUIRED

In the event a settlement between the parties is reached before the settlement conference date, parties are to notify the settlement judge immediately.

12. CONSEQUENCES OF NON-COMPLIANCE

Upon certification by the Settlement Judge of circumstances showing non-compliance with this order, the assigned trial judge may take any corrective action permitted by law. Such action may include contempt proceedings and/or assessment of costs, expenses and attorney fees, together with any additional measures deemed by the court to be appropriate under the circumstances.

13. ADJUNCT SETTLEMENT JUDGE FEES

The Adjunct Settlement Judge will conduct the settlement conference in exchange for \$1,500.00 in fees. The Defendants shall be responsible for payment of these fees. Counsel for Defendants shall remit the fees to the Adjunct Settlement Judge prior to the commencement of the settlement conference.

Dated this 25th day of June, 2009.

Dated this 25th Day of June 2009.



Ronald A. White
United States District Judge
Eastern District of Oklahoma

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